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Dated: 6-24-02 Signature: Richard J. Zimmermann
(Richard Zimmermann))

Docket No.:
30105/32001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of:

Carl W. Hasting et al.

Application No.: 09/175,748

Group Art Unit: 1617

Filed: October 20, 1998

Examiner: R. Travis

For: Performance-Enhancing Dietary Supplement

DECLARATION OF DAVID J. BARNES

I, David J. Barnes, am one of the named inventors of the application Serial No. 09/175,748, filed October 20, 1998, and assigned to Reliv' International, Inc. located in Chesterfield, Missouri. I have been employed by Reliv' International, Inc. since 1993, as Director of Research and Quality Control (from 1993 to 1995), as Director of Technical Affairs and Manufacturing Operations (from 1995 to 2001), and as Vice President of Technical Affairs and Manufacturing Operations (from 2001 to present).

As Vice President of Technical Affairs and Manufacturing Operations, I am directly involved and fully informed concerning the manufacturer of dietary supplements by Reliv' International, Inc. I have personal knowledge that the Provantage dietary supplement described in the examples of the above-identified patent application and claimed in that application was conceived, reduced to practice, finalized, cleared for commercial production, and approved for sale by the company long before August 21, 1998, the filing date of Gardiner Patent 6,136,339.

Submitted herewith are two groups of documents marked Applicants' Exhibit A and Applicants' Exhibit B, respectively. Certain information--particularly the names of suppliers--has been blanked out because it is considered confidential information. Otherwise, the documents are true copies of the originals.

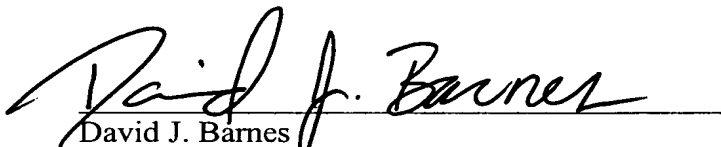
The documents of Exhibit A (three sheets) set forth the formulation for Provantage. They constitute a QA Batch Test Record resulting in approval of the formulation on October 6, 1997 for commercial production of the dietary supplement constituting this invention.

The second group of documents (Exhibit B, four sheets) constitutes a collection of records relating to the subsequent commercial production and clearance of the dietary supplement disclosed and claimed in the application. They reveal that the product went into commercial production on October 7, 1997 and was packaged and approved for sale on that date.

Since the Provantage product disclosed and claimed in the patent application was formulated, tested, approved, and commercially produced well before the filing date of Gardiner Patent 6,136,339, it follows that applicants' invention was completed, that is, conceived and reduced to practice, long before that filing date.

I have reviewed the Office Actions mailed June 20, 2001 and January 7, 2002, and I understand that the Examiner has rejected claims 11-14 and 25-27 as being anticipated by Gardiner Patent 6,136,339. I have reviewed that patent and respectfully submit that this declaration and the Exhibits appended hereto clearly establish that my co-inventors and I invented the subject matter of claims 11-14 and 25-27 prior to August 21, 1998 and, specifically, that my co-inventors and I invented a food supplement that includes both lipoic acid and creatine monohydrate long prior to the filing date of the Gardiner patent.

I further declare that the foregoing statements are true to the best of my knowledge and belief. I am aware that willfully making false statements may subject me to punishment and may jeopardize the validity of any patent(s) that may issue on the pending application.


David J. Barnes
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Dated: 6/19/02